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No. 430

IN THE SUPREME COURT
OF
THE UNITED STATES

OCTOBER TERM, 1946

UNITED STATES OF AMERICA, Petitioner

vs.

OGILVIE HARDWARE COMPANY, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

FIRST SUPPLEMENTAL BRIEF FOR RESPONDENT

H. C. WALKER, Jr.,
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Attorneys for Respondent.

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Since filing our original brief in this case, we have learned that the Report of the House Committee on Ways and Means did not deal with Section 501 of the 1942 Revenue Bill as adopted by both houses. It

follows that the suggestion in our original brief as to a conflict between the report of the House Ways and Means Committee and that of the Senate Finance Committee lacks merit and is withdrawn.

The situation as we now understand it is that an ambiguous and self-contradictory report of the meaning of Section 501 was made to the Senate by the Senate Finance Committee and no report on the subject was made to the House, the members of which would naturally understand Section 501 to mean just what it says.

We stand upon the position originally taken by us and sustained by both of the lower courts that Section 501 of the Revenue Bill of 1942 is clear and unambiguous and should not be interpreted or construed so as to give it a meaning other than that which follows from the ordinary meaning of the words used in the statute.

We again emphasize that even if a reference to the Report of the Senate Finance Committee with regard to the meaning of a clearly expressed section of the revenue bill be of more than academic interest, the text of that report does not in any way conflict with the wording of the statute. See pages 33 through the first paragraph on page 35 of our original brief.

Of the illustrations of the application of the deficit credits which follow the text of the report, as we pointed out in our original brief, only the second illustration may be construed as being in conflict with the text of the report and the wording of the law itself;

and there is no explanation of why the author of Example No. 2 was permitted to write it into the report. It may be, as suggested in the brief of one of the amici curiae that the author of Example No. 2 which was included in the Report of the Senate Finance Committee may have had in mind the particular kind of nontaxable reorganization which was considered by this Court in *United States v. Phellis*, *257 U. S. 156*, *66 L. Ed. 180*, and *Cullinan v. Walker*, *262 U. S. 134*, *67 L. Ed. 906;* but we do not rest our own argument upon that premise.

It seems to us plain that except for Example No. 2 the entire Report of the Senate Finance Committee is a logical and orderly explanation of what Congress was trying to accomplish and what we think it did accomplish by the passage of Section 501 of the Revenue Bill of 1942. Example No. 2 is wholly inconsistent with the purpose of Congress as thus expressed, the meaning of the law and the remainder of the Report of which it is a small part. We do not think the tail should be permitted to wag the dog in this particular case, and since Example No. 2 is reconcilable neither with the balance of the long report of the Senate Finance Committee nor with the controlling language of the amendment adopted following that report, we submit that the greatest effect that can be reasonably given to it is to conclude that its use makes the report ambiguous and impossible of acceptation without ignoring or rejecting either the second example or the balance of the report.

Certainly this is true: The intention of Congress to grant relief to corporations situated just as was the respondent here is so evident from the context of the report as well as from the unambiguous language of Section 501 of the Revenue Bill of 1942 that a single example out of six which conflicts with that intent and would largely prevent that intent from being accomplished should not be accepted as the sole guide for construing the law while the remainder of the report and the words of the law itself are given no weight.

Respectfully submitted.

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